

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Application of)
)
COUNTY OF WESTCHESTER) File No. 0002107869
)
To Modify License for Station WQBR539,)
Yonkers, New York)

ORDER

Adopted: November 25, 2005

Released: November 28, 2005

By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. We have before us an application and a waiver request filed by the County of Westchester, New York, (Westchester) to modify its license for Station WQBR539, Yonkers, New York.¹ Westchester requests an additional UHF² frequency pair at Port Chester, New York, consisting of Part 22 paging control frequency 476.2375 MHz and trunked mobile frequency 479.2375 MHz. Westchester seeks a waiver, pursuant to Section 337(c) of the Communications Act of 1934, as amended (the Act),³ of Sections 22.7, 22.501, 22.621, 22.651, 90.303, and 90.311 of the Commission's Rules,⁴ to use currently unassigned frequencies allotted for non-public safety use.⁵ For the reasons stated herein, we grant Westchester's waiver request.

II. BACKGROUND

2. Westchester is part of the New York City metropolitan area, located north of the Bronx, and has a population of one million people.⁶ Several major corporate headquarters, such as those of IBM and Pepsico are based in the County, and Westchester provides electricity to the metropolitan area and water to New York City.⁷ In an earlier application and waiver request, Westchester stated that it needs a total of six frequency pairs to satisfy its public safety communications requirements for the southern part of the

¹ See FCC File No. 0002107869 (filed March 31, 2005, amended on July 12, 2005) (Request).

² Frequencies in the 300 MHz to 3 GHz range are Ultra High Frequencies (UHF), but land mobile frequencies in the 450-512 MHz range are sometimes known as the land mobile "UHF band." In this *Order*, references to UHF mean 450-512 MHz. See, e.g., Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Notice of Proposed Rule Making*, WT Docket No. 99-87, 14 FCC Rcd 5206, 5215 ¶¶ 11-12 (1999).

³ 47 U.S.C. § 337(c).

⁴ 47 C.F.R. §§ 22.7, 22.501, 22.621, 22.651, 90.303, 90.311. Westchester also requested waiver of any other Commission rules that are necessary to grant its application. See Request at 1.

⁵ See Request at 1.

⁶ *Id.* at 2.

⁷ *Id.*

county.⁸ On November 29, 2004, the Wireless Telecommunications Bureau, Public Safety and Critical Infrastructure Division (Division) granted Westchester a waiver pursuant to Section 337(c) of the Act to permit it to operate a public safety radio system on five unassigned UHF frequency pairs allotted for non-public safety use.⁹ Westchester now seeks to add frequency pair 476/479.2375 MHz to Station WQBR539, in order to complete the southern county system.¹⁰

3. Because the requested frequencies are not designated for public safety use, Westchester requires a waiver of Sections 22.7, 22.501, 22.621, 22.651, 90.303, and 90.311 of the Commission's Rules.¹¹ Westchester seeks such a waiver pursuant to Section 337(c) of the Act.¹² On June 27, 2005, the Division placed Westchester's application and waiver request on public notice.¹³ We received no comments or reply comments.

III. DISCUSSION

4. Section 337(c) of the Act provides that the Commission must waive any rules necessary to authorize entities providing public safety services to operate on unassigned non-public safety spectrum, if the Commission makes five specific findings:

- public safety spectrum is not immediately available;
- the proposed use will not cause harmful interference to protected spectrum users;
- public safety use of the unassigned frequencies is consistent with public safety spectrum allocations in the geographic area;
- the unassigned frequencies have been allocated for non-public safety use for more than two years; and
- grant of the application is consistent with the public interest.¹⁴

⁸ See FCC File No. 0001801202, County of Westchester (filed July 8, 2004), as amended on August 2, 2004, August 20, 2004, September 14, 2004, and September 17, 2004, attached Waiver Request at 3.

⁹ See County of Westchester, *Order*, 19 FCC Rcd 23189 (WTB PSCID 2004) (*Order*). The Division noted that Westchester planned to add a sixth frequency pair when such a pair becomes available. *Id.* at 23190 ¶ 3.

¹⁰ Request at 1.

¹¹ 47 C.F.R. §§ 22.7, 22.501, 22.621, 22.651, 90.303, 90.311. Section 22.7 limits eligibility to operate on Part 22 frequencies to common (*i.e.*, commercial) carriers. Section 22.501 defines the scope of the licensing and operation of the public paging and radiotelephone service. Section 22.621 requires the use of point-to-multipoint operation on one of the requested frequencies. Section 22.651 requires the use of trunked mobile operations on the other frequency requested. *But see* 47 C.F.R. § 22.655 ("The FCC is redesignating public mobile channels in the 470-512 MHz range from trunked mobile operation to point-to-multipoint operation as the demand for trunked mobile service decreases.") Section 90.303 provides frequencies available for assignment to land mobile systems, and references Section 90.311, which excludes frequencies in the 470-512 MHz range from assignment to private land mobile radio applicants if the frequencies are allocated for services under Part 22.

¹² See 47 U.S.C. § 337(c).

¹³ See Wireless Telecommunications Bureau Seeks Comment on Request for Waiver by the County of Westchester, New York to Add Two UHF Part 22 Paging Frequencies to Its County-Wide Public Safety Radio System, *Public Notice*, 20 FCC Rcd 11101 (WTB PSCID 2005).

¹⁴ See 47 U.S.C. § 337(c).

5. Public safety services are services of which the principal purpose is to protect the safety of life, health, or property, provided by governmental entities whose primary mission is the provision of such services, or by non-governmental entities authorized by such a governmental entity, and that are not made commercially available to the public.¹⁵ Based on the record before us, we find that Westchester is an entity providing public safety services.¹⁶ We therefore move to examining whether Westchester meets the statutory requirements supporting a waiver under Section 337(c) of the Act.

6. *Immediate availability of public safety spectrum.* In the previous *Order*, we found that public safety spectrum is not immediately available to Westchester.¹⁷ Westchester states that the situation has not changed in the short time since the release of the *Order*.¹⁸ Based on the record before us, we concur and find that no other public safety spectrum is immediately available to satisfy the requested public safety service use.

7. *Technical feasibility of requested use without causing harmful interference.* Westchester's proposed frequencies are in the 470-512 MHz band, which is allocated on a geographically-shared basis with television broadcast stations.¹⁹ In the New York City metropolitan area, the Commission regulates the requested frequencies under Part 22 of its Rules.²⁰ Specifically, the Commission has designated frequency 476.2375 MHz for point-to-multipoint transmitters used to support transmitters that provide public mobile service, *i.e.*, paging control.²¹ Frequency 479.2375 MHz is designated for trunked mobile operations.²² In support of its request, Westchester provided an analysis of potential interference and concluded that use of these channels by Westchester is technically feasible and will not cause harmful interference to co-channel licensee Somerset County, New Jersey, which uses frequency 479.2375 MHz for public safety mobile-to-mobile communications on Station WQBL360, North Plainfield, New Jersey and Station WQBL367, Somerville, New Jersey.²³ Westchester also provided the certification of the Association of Public-Safety Communications Officials International, Inc. (APCO), a FCC-certified coordinator for public safety frequencies, that Westchester's proposed modification is compliant with TSB88 guidelines as they pertain to land mobile UHF T-band²⁴ frequencies and propagation.²⁵ Further,

¹⁵ See 47 U.S.C. § 337(f).

¹⁶ See Nassau County Police Department, *Memorandum Opinion and Order*, 17 FCC Rcd 14252, 14258 ¶ 11 (WTB PSPWD 2002).

¹⁷ *Order*, 19 FCC Rcd at 23192-93 ¶ 8.

¹⁸ Request at 2.

¹⁹ Frequencies in the 470-512 MHz band, normally assigned to UHF Television channels 14 through 20, were made available for land mobile radio use in 11 cities in the early 1970s in the "UHF-TV Sharing" proceeding. See Land Mobile Use of TV Channels 14 through 20, Docket No. 18261, *Report and Order*, 23 FCC 2d 325 (1970).

²⁰ 47 C.F.R. § 22.1 *et. seq.*

²¹ See 47 C.F.R. § 22.621.

²² See 47 C.F.R. §§ 22.651, 22.655.

²³ Request at 3, Attachment 2, Analysis of the Potential for Co-Channel Interference From Westchester County, NY into Somerset County, NJ, by Vogel Consulting Group, Inc. Somerset was authorized pursuant to Section 337 of the Act. See Seven Public Safety Agencies in the New York Metropolitan Area, *Order*, 19 FCC Rcd 15355 (WTB PSCID 2004).

²⁴ "T-band" is another name for the UHF television sharing band, or 470-512 MHz.

²⁵ See Letter dated July 6, 2005 from Joseph L. Yurman, P.E., Southern New York Local Advisor, APCO International, to Thomas Eng, Public Safety and Wireless Division, Federal Communications Commission.

APCO predicts that Westchester will not interfere with Somerset County's public safety mobile receivers.²⁶ In addition, Westchester has obtained a letter from co-channel licensee Syosset Fire District (Syosset) agreeing to coordinate frequency use with Westchester to avoid any harmful interference and consenting to the grant of the instant application.²⁷ Syosset is licensed on both of Westchester's requested frequencies on Station WPYJ816, Syosset, New York. We determined in our previous *Order* that Westchester meets the spacing requirements for co-channel and adjacent channel TV stations.²⁸ Based on the record before us, we believe the operational and technical parameters of Westchester's proposed modification meet the Commission's requirements for interference protection to incumbent licensees. Moreover, we note that the potential for interference to adjacent channel users is diminished because Westchester will use 12.5 kHz bandwidth equipment on frequencies designated under Part 22 for 20 kHz bandwidth.²⁹ We therefore find that Westchester's proposed system is technically feasible and will not cause harmful interference to protected spectrum users.

8. *Public safety use of the frequencies is consistent with other public safety spectrum allocations in the geographic area.* In the previous *Order*, we found that Westchester's request for five UHF frequency pairs satisfied this statutory requirement.³⁰ We note that the frequencies in the instant application are in the same 470-512 MHz band as those previously granted. Accordingly, we find that public safety use of the unassigned frequencies is consistent with public safety spectrum allocations in the geographic area.

9. *The frequencies have been allocated for non-public safety use for more than two years.* The Commission allocated these frequencies for non-public safety use in 1994.³¹ Thus, these frequencies have been allocated for their present use for more than two years.

10. *Granting this application is consistent with the public interest.* In the previous *Order*, we found that granting Westchester's request for five UHF frequency pairs was in the public interest.³² We find that circumstances previously found to warrant grant of waiver relief continue to be present and support grant of the additional requested waiver relief. In this regard, we find that a grant of the instant application will provide Westchester with the sixth frequency pair that is needed to complete its public safety communications system in the southern portion of the county.³³ We therefore conclude that granting the application is consistent with the public interest.

²⁶ *Id.*

²⁷ See Letter dated February 23, 2005 from Court Cousins, Director, Communications Division, Syosset Fire District, to Thomas Raffaelli, Program Coordinator – Radio, County of Westchester .

²⁸ See *Order*, 19 FCC Rcd at 23193 ¶ 9.

²⁹ See 47 C.F.R. § 22.621. The adjacent channel licensees are the City of Bayonne, New Jersey and Jersey City, New Jersey. Both use 12.5 kHz bandwidth, and their frequencies are separated from Westchester's requested frequencies by 12.5 kHz.

³⁰ See *Order*, 19 FCC Rcd at 23194 ¶ 10.

³¹ See Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, *Report and Order*, CC Docket 92-115, 9 FCC Rcd 6513 (1994).

³² See *Order*, 19 FCC Rcd at 23194 ¶ 12.

³³ Request at 2.

IV. CONCLUSION

11. We conclude that Westchester's waiver request satisfies the criteria set forth under Section 337(c) of the Act to obtain a grant of its application to add frequency pair 476/479.2375 MHz. We therefore grant Westchester's request.

V. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 337(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 337(c), the request for waiver associated with the captioned application filed by the County of Westchester on March 31, 2005, as amended, to use frequencies 476/479.2375 MHz for public safety services as requested in the captioned application **IS GRANTED**.

13. **IT IS FURTHER ORDERED** that, pursuant to Sections 4(i) and 337(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 337(c), that File No. 0002107869 **SHALL BE PROCESSED** consistent with this *Order* and the Commission's Rules.

14. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0131, 0331.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
Chief, Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau